

WESTFIELD-WASHINGTON

BOARD OF ZONING APPEALS

September 9, 2008

0808-VU-04

Exhibit I

PETITION NUMBER:	0808-VU-04
SUBJECT SITE ADDRESS:	18945 Moontown Road
APPELLANT:	Mary Hession
REQUEST:	The Appellant is requesting a Variance of Use from the Westfield-Washington Zoning Ordinance (WC 16.04.030, D3) to allow the use of dog boarding as a home occupation in the SF-2 District.
CURRENT ZONING:	SF-2
CURRENT LAND USE:	Single-Family Residential
APPROXIMATE ACREAGE:	8.57
RELATED CASES:	None
EXHIBITS:	1. Staff Report, 09/9/08 2. Aerial Location Map, 08/12/08 3. Property Card, 08/12/08 4. Appellant's Application and Plans, 07/15/08 5. Hamilton County Health Department letter, 08/12/08 6. Public comment, 09/9/08
STAFF REVIEWER:	JCM

PETITION HISTORY

At the August 12, 2008 Board of Zoning Appeals meeting, the petitioner chose to continue the case hearing until the September BZA meeting. A public hearing did not occur on August 12 and the public notice carries over to the September 9th BZA meeting. The September 9, 2008 BZA meeting represents the first hearing of this petition before the Board.

PROPERTY HISTORY

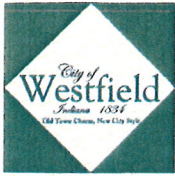
According to Hamilton County records, the existing residential structure was constructed on the subject property in 1995. Prior to 1995, an aerial from 1985 shows the property zoned as AG-SF1 and being used agriculturally.

There are no pending code enforcement cases for the subject property. There are no previous special exceptions, subdivision plats, development plan, site plan, or rezoning cases for the subject property.

ANALYSIS

This request would provide for the use of the subject site as a dog boarding business. "Dog boarding (kennel)" is not identified as a permitted use in the SF-2 District. Submitted plans indicate that the proposed "Dog boarding" on the subject property would include ten (10) suites, allowing one dog per suite and an outdoor fenced area for exercise.

Proposed improvements to the property would include the conversion of an existing attached three (3) car garage into a dog boarding business by constructing an interior wall along the



existing garage doors and the addition of a six foot (6') wooden fence. The proposed fence would enclose the existing gravel drive and part of the grass side yard, as indicated in Exhibit 4.

A letter submitted by the Hamilton County Health Department has identified an issue with the existing septic system. The four (4) bedroom house is connected to a septic system that is permitted to only service a three (3) bedroom house. The Hamilton County Health Department has expressed concerns with the petitioner adding a sink or bath tub area to the septic system (exhibit 5). Due to Hamilton County Health Departments concerns about adding additional connections to the house, the appellant has agreed not to add a sink and bathing area requiring connection into the existing septic system.

Westfield Fire Department expressed concerns about the width of the gravel access drive. The current width of the access drive is fifteen feet (15'). A variance from the state is required. WFD has verbally stated support of that variance request to the state to keep the driveway width at fifteen feet (15'). Further, a plastic corrugated drainage tile currently runs under the gravel access drive connecting the north and south fields to allow field drainage. WFD expressed concerns that the emergency equipment could crush the tile. WFD has suggested upgrading the plastic corrugated drain tile with a steel pipe of sufficient strength to support the weight of emergency vehicles. The appellant has agreed to replace the plastic pipe with a pipe that meets the weight requirements for WFD emergency vehicles.

The Land Use Concept Map in the Westfield-Washington Township Comprehensive Plan recommends that this area be developed "New Suburban" (p. 23). Home and Rural-Related Businesses such as open farmland and artisan farms, in the comprehensive plan, are listed as acceptable in the Northwest and Northeast Suburban residential areas (p. 39). AG-SF1 is zoned to promote a rural style of development and lifestyle. AG-SF1 allows kennels as a special exception. Allowing a "Dog Boarding Business" would generally comply with the comprehensive plan.

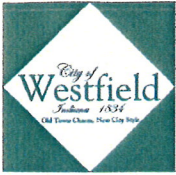
PROCEDURAL

A Board of Zoning Appeals shall approve or deny variances of use from the terms of the zoning ordinance. The board may impose reasonable conditions as a part of its approval. A variance may be approved under IC 36-7-4-918.4 only upon a determination in writing that:

STANDARDS FOR USE VARIANCE REQUEST

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community:

Finding: It is unlikely that establishing a dog boarding business would be injurious to the public health, safety, morals, and general welfare of the community. The petitioner has agreed to address concerns of emergency access, drainage and waste treatment concerns prior to opening the dog boarding business.



2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner:

Finding: It is unlikely that the use and value of adjacent property will be affected in an adverse manner. The nearest residential structure is five hundred feet (500') from the proposed dog boarding area and provides a adequate buffer area for the surrounding neighbors. An existing dog kennel currently operates nearby and the existing kennel has not resulted in any complaints or enforcement issues. It is unlikely that adding an additional dog boarding business would have a negative impact on neighboring properties.

3. The need for the variance of use arises from some condition particular to the property involved:

Finding: The rural nature of the site and surroundings are most consistent with the development pattern of AG-SF1, despite being located within the SF-2 District. AG-SF1 allows "Kennels" as a special exception.

4. The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance of use is sought:

Finding: Strict application of the zoning ordinance would result in using the property for residential use. The property is currently being used as a residence and agriculturally. The zoning ordinance does not create an unnecessary hardship for the use of the property.

5. The approval does not interfere substantially with the comprehensive plan:

Finding: The Comprehensive Plan recommends that this area be developed "New Suburban" (p. 23). Home and Rural-Related Businesses such as open farmland and artisan farms, in the comprehensive plan, are listed as acceptable in the Northwest and Northeast Suburban residential areas (p. 39). AG-SF1 is zoned to promote a rural style of development and lifestyle. AG-SF1 allows kennels as a special exception. Allowing a "Dog Boarding Business" would generally comply with the comprehensive plan.

ADDITIONAL COMMENTS

None.

APPLICABLE CONDITIONS of APPROVAL

1. That the plastic corrugated pipe be replaced with a steel pipe with the strength to support the weight of fire emergency vehicles as approved by WFD;
2. That the petitioner comply with all WFD requirements regarding site access width;
3. That no additional connections into the existing residential septic system be constructed;
4. That no more than ten (10) dogs be boarded at any given time.



RECOMMENDATIONS

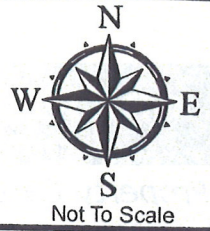
Deny this request based on the findings of this report.

If the Board sees fit to approve, approve with the applicable condition(s) listed above.

JCM



0808-VU-04
08-06-29-00-00-010.006
18945 Moontown Road
Exhibit 2

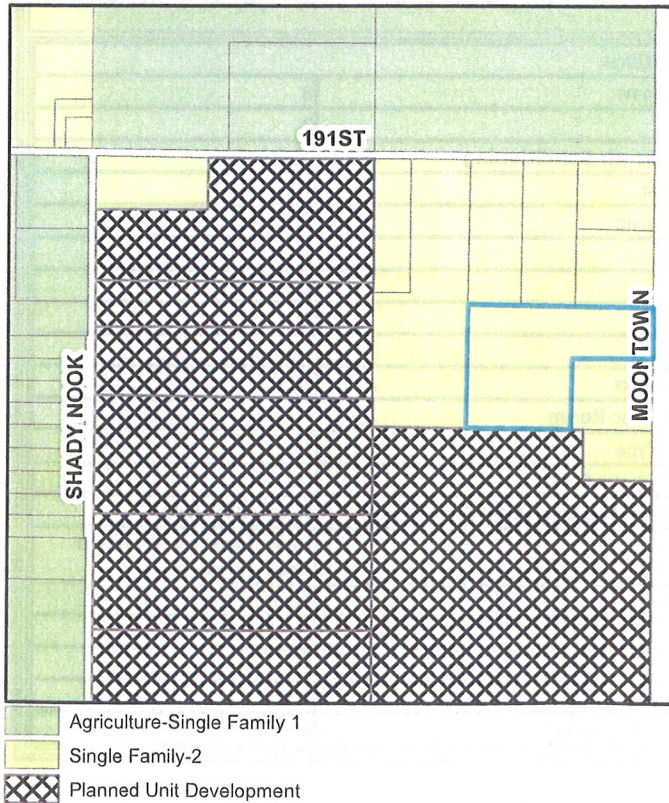


Aerial Location Map

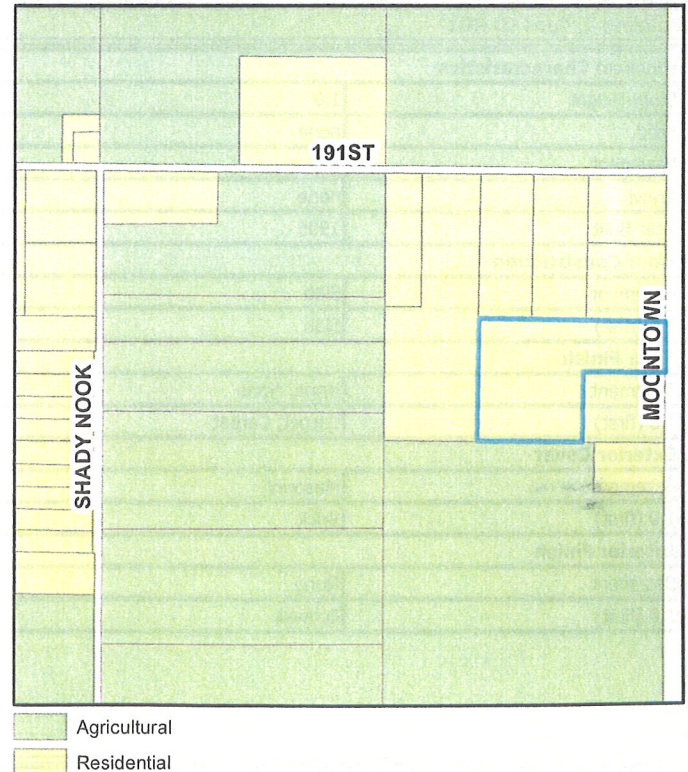
 Site



Zoning Map



Existing Land Use Map (2008)



Property Card Report

1. report type

Reset

2. property search

new search

3. view reports

general parcel info.

spring tax statement

tax payments

property card

fall tax statement

Disclaimer:

This program allows you to view and print certain public records. **Each report reflects information as of a specific date**; so the information provided by different reports may not match. All information has been derived from public records that are constantly undergoing change and is not warranted for content or accuracy. It may not reflect the current information pertaining to the property of interest.

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Any, and all information contained on this web site report is the result of assessment data extracted on the most recent taxable year - **March 1, 2007**. Improvement characteristics may differ from those used to determine the total assessed value listed.

Summary Information - Parcel Number: 08-06-29-00-00-010.006

Property Data

Parcel Location	18945 MOONTOWN RD, NOBLESVILLE
Taxing Unit	Washington
Legal Description	4/7/95 FR WIEHE 9511147 AUD
Section/Township/Range	S29 T19 R04
Subdivision Name	NULL
Lot and Block	Lot Block
Acres	8.57
Effective Frontage	
Effective Depth	
Property Class	Res-1-Family 0 - 9.99 acres

Property Owner as of April 30, 2007

Hession, Mary K

Most Recent Valuation as of March 1, 2007

Assessed Value: Land	65100
Assessed Value: Improvements	448100
Total Assessed Value:	513200

Exterior Features and Out Buildings

1 Attached Garage, 1 Concrete Apron, 1 Pool, 1 Barn,
1 Open Masonry Porch,

Building 1, Card ID R01

Physical Characteristics

Story Height	1.0
Attic	none
Basement	full
Crawl	none
Year Built	1995

Floor Construction

Basement	Slab
1.0 (first)	Slab

Floor Finish

Basement	None, None
1.0 (first)	Carpet, Carpet

Exterior Cover

Basement	Masonry
1.0 (first)	Brick

Interior Finish

Basement	None
1.0 (first)	Drywall

Accommodations

Finished Rooms	8
Bedrooms	3

Heating and Air Conditioning

Primary Heat	YES
Air Conditioning	YES

Plumbing

Full Baths	2
Partial Baths	1

Fireplace

Fireplace Stacks	YES
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Basement Rec Room

Rec Room Type	
Rec Room Square Footage	0

Area/Square Footage (based on exterior eave to eave area)

Building Level	Base Area	Approx. Finished Area
Basement	2886	2886
1.0 (first)	3056	3056

Garage

Garage Type	Brick
Garage Square Footage	884

Petition Number:

Date of Filing:

7-15-08

**Application for VARIANCE OF USE
Westfield – Washington
Board of Zoning Appeals (BZA)**

This application must be completed and filed with the Community Services Department of the City of Westfield, Indiana in accordance with the meeting schedule.

1. Appellant's Name Mary Hession
Address 18945 Moontown Road
Noblesville, IN 46062
Telephone Number _____
2. Landowner's Name Same
Address _____
Telephone Number _____
3. *Representative Jim Shinaver Nelson + Frank Kenberger
*Address 3105 E. 98th St, Suite 170
Indianapolis, IN 46280
*Telephone Number 317.844.0106
*Email Address jims@nf-law.com

*If the applicant is not presenting a petition, please provide contact information for the party representing the applicant.

4. Common description of property (address, location, etc.)
18945 Moontown Road
Noblesville, IN 46062
5. Legal description of property (list below or attach)
See Exhibit A
6. Complete description of the nature of the variance of use applied for:
See Exhibit B

7. **ALL SITE PLANS SHALL BE LEGIBLE AND DRAWN TO SCALE.** Site plans must accompany this application and must depict at a minimum:

- a. Lot(s) shape and dimensions;
- b. Location and dimensions of existing and proposed structures;
- c. Location and dimensions of existing and proposed points of ingress and egress; and
- d. All topographic and natural features and/or other unusual characteristics associated with the property.

8. The Applicant must address the following criteria and establish at the public hearing that each of the following is true in order to obtain a favorable determination from the BZA.

No variance of use shall be granted unless the BZA finds all of the following to be true:

- a. That the approval of such variance of use will not be injurious to the public health, safety, morals, and general welfare of the community:

See Exhibit C

- b. That the use and value of the area adjacent to the property included in the variance of use will not be affected in a substantially adverse manner:

See Exhibit C

- c. That the need for the variance of use arises from some condition particular to the property involved:

See Exhibit C

CITY OF WESTFIELD, INDIANA

- d. That the strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance of use is sought:

See Exhibit C

- e. That such variance does not interfere substantially with the comprehensive plan:

See Exhibit C

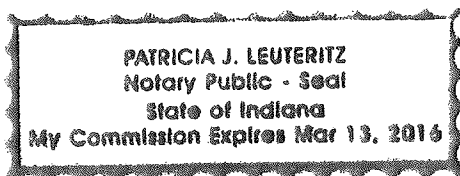
The Appellant hereby certifies that the information contained in and accompanying this application is true and correct.

Mary Hession
Applicant

SUBSCRIBED AND SWORN TO ME THIS 15th DAY OF July, 2008.

Patricia J. Leuteritz
Notary Public Patricia S. Leuteritz

My commission expires: 3/13/2016



"Exhibit A"

PART OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 19 NORTH, RANGE 4 EAST, IN HAMILTON COUNTY, INDIANA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF SAID HALF-QUARTER SECTION BEING SOUTH 0 DEGREES 15 MINUTES 12 SECONDS WEST 700.34 FEET FROM THE NORTHEAST CORNER OF SAID HALF-QUARTER SECTION; THENCE SOUTH 0 DEGREES 18 MINUTES 12 SECONDS WEST ALONG SAID EAST LINE 250.00 FEET; THENCE NORTH 89 DEGREES 20 MINUTES 48 SECONDS WEST 397.86 FEET; THENCE SOUTH 0 DEGREES 15 MINUTES 12 SECONDS WEST 328.46 FEET; THENCE NORTH 89 DEGREES 33 MINUTES 48 SECONDS WEST 475.34 FEET; THENCE NORTH 0 DEGREES 15 MINUTES 12 SECONDS EAST 576.19 FEET TO A 5/8" REBAR WITH YELLOW CAP; THENCE SOUTH 89 DEGREES 33 MINUTES 48 SECONDS EAST 873.19 FEET TO THE POINT OF BEGINNING AND CONTAINING 8.573 ACRES, MORE OR LESS.

ALSO TOGETHER WITH DRAIN EASEMENT:

PART OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 19 NORTH, RANGE 4 EAST, IN HAMILTON COUNTY, INDIANA, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE EAST LINE OF SAID HALF-QUARTER SECTION BEING SOUTH 0 DEGREES 15 MINUTES 12 SECONDS WEST 950.34 FEET FROM THE NORTHEAST CORNER OF SAID HALF-QUARTER SECTION; THENCE NORTH 71 DEGREES 41 MINUTES 53 SECONDS WEST 418.44 FEET TO THE POINT OF BEGINNING OF THE WITHIN DESCRIBED EASEMENT BEING ON THE CENTERLINE OF A COUNTY REGULATED DRAIN; THENCE SOUTH 0 DEGREES 15 MINUTES 12 SECONDS WEST 455.33 FEET; THENCE NORTH 89 DEGREES 33 MINUTES 48 SECONDS WEST 25.00 FEET; THENCE NORTH 0 DEGREES 15 MINUTES 12 SECONDS EAST 463.39 FEET TO SAID CENTERLINE THENCE SOUTH 71 DEGREES 41 MINUTES 53 SECONDS EAST ALONG SAID CENTERLINE 26.29 FEET TO THE POINT OF BEGINNING.

Parcel No: 08-06-29-00-00-010.006



**HAHN SURVEYING
GROUP, INC.**

Surveyors & Engineers

2850 E. 96th St., Indianapolis, IN 46240

PHONE: (317) 846-0840 or (317) 846-4119

FAX: (317) 846-4298 or (317) 582-0662

Job No.: 2006091380

Sheet 3 of 3

EXHIBIT B

I am requesting a Variance of Use at my home to open a small, upscale dog retreat. The current 3 car attached garage would be transformed into the boarding area. It will contain suites with toddler beds for the guests. There will be no more than 10 dogs at any one time in the boarding area. There will be no exterior changes to my home. The only addition to my property would be a fence that would come off the 3 car garage and connect to the existing fence.

Several years ago, I had a retreat for dogs at my home in Lebanon, IN. I am modeling my current plan to be very similar to what I did there. Throughout the presentation, you will see photos that reflect what the finished product will look like. These photos came from my retreat in Lebanon.

EXHIBIT C

BZA FINDING OF FACT

8A That the approval of such variance of use will not be injurious to the public health, safety, morals, and general welfare of the community because the Petitioner is seeking a use variance to permit a home occupation for a dog boarding facility which will house a maximum of ten (10) dogs. There will be no changes to the exterior structure of the home and the home is set back a considerable distance from the adjacent roadway.

8B That the use and value of the area adjacent to the property included in the variance of use will not be affected in a substantially adverse manner because the Petitioner is seeking a use variance to permit a home occupation for a dog boarding facility which will house a maximum of ten (10) dogs. There will be no changes to the exterior structure of the home and the home is set back a considerable distance from the adjacent roadway.

8C That the need for the variance of use arises from some condition particular to the property involved because the property is zoned for a residential type of use and in order for the Petitioner to operate the very low intense dog boarding facility on the property, she must obtain a use variance from the Board of Zoning Appeals.

8D That the strict application of the terms of the Zoning Ordinance will constitute an unnecessary hardship applied to the property because the Petitioner will be prevented from operating a very low intense dog boarding facility on the property.

8E That such variance does not interfere substantially with the Comprehensive Plan because the Comprehensive Plan for this particular area appears to designate the real estate as New Suburban. However, within such designation, low intense home occupation businesses are not specifically prohibited; and, appropriate home occupation uses are an important aspect for a "healthy" community business base. Further, the requested use variance will be a very low intense dog boarding facility with a maximum of ten (10) dogs. The portion of the home that will contain the "dog suites" is set back a considerable distance from the adjacent roadway. In addition, there exists around the perimeter of the property significant tree cover and other vegetation that will provide very adequate screening and buffering. Appropriate set backs and appropriate buffering/screening are identified as important and beneficial development policies in the Comprehensive Plan. There will be no signage related to this request and for all intents and purposes the property will continue to appear as a residential home. In fact, the proposed use would be much less intense in scale than the institutional, artisan farm and equestrian uses that the Comprehensive Plan appears to consider as appropriate land uses in the New Suburban District. As a result of the foregoing, the approval of the Use Variance request will not substantially interfere with the policies and guidelines contained within the Comprehensive Plan.

07/25/2008 09:15 FAX 3177768506

HAM CO HEALTH DEPT

002/002



HAMILTON COUNTY HEALTH DEPARTMENT

CHARLES HARRIS, M.D. • HEALTH OFFICER

July 24, 2008

Mary Hession
18945 Moontown Rd.
Noblesville, IN 46062

Dear Mary,

You have requested, by phone, a letter from the Hamilton County Health Department informing you of the requirements our office has pertaining to a dog boarding kennel. After reviewing your septic system permit (95-7138), I have found that your septic system is only sized for a 3 bedroom home. You have indicated by phone that your home is a four bedroom home. If you choose to add a hand sink or a tub for commercial purposes, you will need to contact the Indiana State Department of Health for additional requirements.

Sincerely,

Tammy Gleber

ONE HAMILTON COUNTY SQUARE, SUITE 30
NOBLESVILLE, INDIANA 46060-2229
(317) 776-8500 • FAX (317) 776-8506
www.co.hamilton.in.us

August 7, 2008

Community Development Department
Alan Salzman and Kevin Todd
130 Penn Street
Westfield, Indiana 46074

This letter is in reference to Docket # 0808-VU-04 being submitted to the Westfield Washington Township Board of Zoning Appeals to be heard on Tuesday, August 12, 2008.

I am writing on behalf of the 5 managers who represent Westfield Lutheran Mission LLC. Our LLC owns approximately 50 acres at the northeast corner of 186th and Shady Nook Road. This ground is due west of the ground requesting the variance.

I am also writing as a member of Lord of Life Lutheran Church. We are currently building our new church at 191st and Shady Nook Road. This ground is also just west of the ground requesting the variance.

The 50 acres just west of the subject property is zoned residential. At some point in time this area will consist of single family and multifamily homes. A dog retreat has no place in the middle of a residential area. The strong opinion we have is solely related to noise. Any group of dogs, whether it is 2, 5, 10 or 50 are going to bark, especially those unfamiliar with each other. Dogs do not differentiate between day barking and night barking, and they also don't differentiate between an upscale retreat and an economy retreat. It is impossible to buffer this noise even in an enclosed area, let alone a fenced area outside, which is noted as being added at this location. Dog noise will have a very negative impact on the ability of any builder and developer to sell homes in this area. It will also negatively impact the enjoyment of those who currently live within at least a mile of this location, or who hope to live on the land currently zoned for residential use.

Lord of Life Church owns 25 acres just west of this property. Our church plans on using some of the 25 acres for outdoor activities. Future plans call for a soccer field as well as a playground. Dogs respond to outside noises. As kids are enjoying the outdoors it is reasonable to expect dogs to bark at this noise further creating problems for current and future residents.

I personally live one mile south of the Bed and Biscuit dog retreat which is located on SR 32 in Eagletown. Our family has used this facility on several occasions for our 2 dogs.

Every time a dog is brought in or a dog leaves, there is persistent barking for a period of time. At least several times a week we hear the dogs at this location even given the distance from our home. As you look at the location of current "dog retreats" there is a specific reason you don't find them located in predominantly residential areas.

We respectfully ask that you deny the variance application for a dog retreat of any kind located at 18945 Moontown Road, Noblesville, Indiana.

Sincerely,

A handwritten signature in black ink, appearing to read "Randy McNutt". The signature is fluid and cursive, with the first name "Randy" and last name "McNutt" clearly distinguishable.

Randy McNutt

Manager

Westfield Lutheran Mission LLC

August 28, 2008

Board of Zoning Appeals

Martin Raines, Daniel Degman, William Sanders, Craig Wood, Randy Graham

130 Penn Street

Westfield, Indiana 46074

On August 11th I delivered a letter to you regarding Docket #0808-VU-04. The variance to be heard at your August 12th meeting was a request by Mary Hession to have a Dog Retreat located on her property at 18945 Moontown Road in Noblesville. My letter communicated my concerns regarding this Dog Retreat and requested that you deny the variance application. My request was based on potential noise associated with having multiple dogs which are unfamiliar with each and the constant barking that could result from that.

On August 21st I visited with Mary at her home. Mary has assured me that the area the dogs will be staying is in the 3 car garage attached to her home. Mary has also indicated there will be a wall built inside the overhead doors to control the temperature in the retreat area. This wall is important because it will control the noise of barking dogs at feeding time as well when dogs come and go from the facility. Mary has also assured me that only dogs of the same family will be out in the yard at one time. These dogs will be in a fenced area and not allowed out with dogs they are unfamiliar with. This also will control the potential for barking.

Based on Mary's assurances, and my belief she is sincere in running the retreat in a manner that is respectful of all neighbors, I withdraw my letter asking that you deny the variance application.

Sincerely,

Randy McNutt

Westfield Lutheran Mission

Lord of Life Lutheran Church

